IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7186 OF 2005

Shri Rau Bayaji Vonmore. . .. Petitioner.

vs.

Shri Shivaji Tukaram

Mali & Ors. .. Respondents.

Mr. K.S. Patil for petitioner.

Mr. P.D. Pise for respondent nos. 1 to 8.

CORAM : S.U. KAMDAR, J.

DATE : 12th December, 2005.

P.C.:

. By the present petition the petitioner is challenging the order dated 16.8.2005 by which the application for amendment of the written statement has been rejected. It is no doubt true that the matter is at the appellate stage and at this stage the present application is made for amending the written statement by incorporating the statement that by virtue of the mortgage by conditional sale the petitioner has become the owner of the said property. The application has been rejected on the ground that the new case is sought to be made out by

the petitioner herein. The learned counsel for the respondent has also contended that there is an admission in the written statement from which the petitioner is seeking to wriggle out and, therefore, the amendment should not be granted. I do not find any such case in the present case. The original written statement pleaded the case that a mortgage by conditional sale and now it has been contended that by virtue of the specific period mentioned in the same having expired, the petitioner has become a owner in respect of the said property. The learned counsel appearing for the respondent however states that he will not lead any further oral or documentary evidence in support of the aforesaid averments now incorporated by amending the written statement. In that view of the matter, the impugned order dated 16.8.2005 is quashed and set aside, the application for amendment being Exhibit-36 in Civil Appeal No. 5 of 1999 is granted. The appellate court is directed to decide the matter by taking into consideration the aforesaid averments in the written statement. Amendment to be carried out within one week from today. The petitioner to pay costs quantified at Rs. 5,000/- to the respondent. Petition disposed of accordingly. No order as to costs.